

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

CAROL DOMINY-GARDNER,

Appellant,

v.

UNIVERSITY OF WASHINGTON,

Respondent.

Case No. DISM-00-0032

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 Hearing. This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and GERALD L. MORGEN, Vice Chair. The hearing was held on March 15, 2001, in the South Campus Center on the campus of the University of Washington in Seattle, Washington. LEANA D. LAMB, Member, did not participate in the hearing or in the decision in this matter.

1.2 Appearances. Appellant did not appear and no representative appeared on her behalf. Jeffrey W. Davis, Assistant Attorney General, represented Respondent University of Washington.

1.3 Nature of Appeal. This is an appeal from a disciplinary sanction of dismissal for reporting to work under the influence of alcohol, neglect of duty and unprofessional conduct.

1.4 Citations Discussed. WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Painter v Dept. of Labor and Industries, PAB No. D94-034 (1995), aff'd, Thurston Co. Super. Ct. No. 95-2-01406-0 (1998); Downing v Dept. of Fish and Wildlife, PAB No. DISM-99-0002 (2000).

II. FINDINGS OF FACT

2.1 Appellant Carol Dominy-Gardner was an Anesthesia Technician II and a permanent employee for Respondent University of Washington at Harborview Medical Center. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 251 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on May 2, 2000.

2.2 The primary duties of an Anesthesia Technician II are to assemble, maintain and operate equipment used for patient anesthesia and clinical analysis. In addition, Anesthesia Technician II's record and present physiological readings for interpretation by medical staff during surgical procedures.

2.3 Appellant had been employed by the University of Washington since February 1978. Appellant's personnel history indicates that she received numerous letters of reprimand, written and verbal counselings, and a five-day suspension including:

- July 8, 1996, letter of reprimand for arriving at work one-half hour late and leaving one-half hour early without explanation or notice and for failing to document her leave on her time sheet.
- November 7, 1996, letter of reprimand for failing to comply with the on-call schedule and to meet the expectations of her position.
- February 7, 1997, letter of reprimand for unwillingness to perform or assist with the duties of her position and for leaving work without notice to go on lunch break.
- November 10, 1997, letter of reprimand for leaving the work area without notice.
- October 1, 1998, letter of reprimand for failing to comply with all the on-call requirements, including responding to pages.

- March 3, 1999, letter of counseling for reporting to work late on February 6, 1999, and with alcohol on her breath.
- April 19 through 23, 1999, a five-day suspension for failing to follow the requirements of the "On-Call" policy.
- June 10, 1999, letter of reprimand for leaving work early without notice.
- July 1, 1999, verbal counseling for being under the influence of alcohol at work.

2.4 The incident giving rise to this appeal occurred on February 11, 2000. Appellant was scheduled to arrive at work at 7:00 a.m. None of the staff saw Appellant until approximately 7:20 a.m. when Richard Larchey, Anesthesia Technician II, observed her giggling and fumbling around. Mr. Larchey thought that Appellant was under the influence of alcohol. Richie Farr, Anesthesia Technician II, and Mark Nowack, Lead Technician, also observed Appellant and thought that she was drunk. Patrick Smith, Anesthesia Technician, observed Appellant as having a blank, glazed look and being unsteady on her feet. He felt that Appellant's behavior was consistent with a person under the influence of drugs or alcohol.

2.5 Tina Reese, Human Resource Representative, met with Dr. Bruce Cullen, Professor and Chief of Service, and Appellant. Ms. Reese explained to Appellant that a report had been made that she smelled of alcohol. Appellant asserted that the smell was cough medicine. When Ms. Reese questioned her further, Appellant admitted that she had issues with alcohol. Ms. Reese observed that Appellant's eyes were unfocused and her movements were stilted and uncoordinated.

2.6 The circumstances of Appellant's misconduct were summarized in Lee Amarin's, Technical Services Supervisor for the Department of Anesthesiology, memorandum dated March 15, 2000. In the memorandum, Mr. Amarin recommended to Cindy Hecker, Assistant Administrator for Patient

Care Services, that Appellant be dismissed from her position. He felt that dismissal was warranted because of Appellant's continued pattern of unacceptable behavior. He concluded that by being under the influence of alcohol at work, Appellant displayed a willful disregard for the patients, physicians, and staff of the hospital, a willful disregard of the professional standards of the department, and placed the hospital in serious risk of potential liability.

2.7 Ms. Hecker forwarded the recommendation to Tomi S. Hadfield, Chief Operating Officer of Harborview Medical Center. Ms. Hadfield concurred with Mr. Amorin's recommendation. By letter dated March 15, 2000, she dismissed Appellant, effective April 3, 2000, for reporting to work under the influence of alcohol, neglect of duty and unprofessional conduct.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant's behavior was atrocious. Respondent contends that the hospital has a responsibility to provide patients with the best care possible and that by reporting to work under the influence of alcohol, Appellant put the hospital at risk of liability because of her inability to perform the duties of her position. Respondent asserts that in spite of previous discipline and corrective actions, Appellant failed to improve and continued to behave in a manner that discredited the work performed at Harborview Medical Center. Therefore, Respondent asserts that dismissal was appropriate.

3.2 Appellant did not provide a defense to the charges nor did she dispute the appropriateness of the disciplinary sanction before the Board.

IV. CONCLUSIONS OF LAW

1 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
2 herein.

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4 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
5 the charges upon which the action was initiated by proving by a preponderance of the credible
6 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
7 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of
8 Corrections, PAB No. D82-084 (1983).

9
10 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
11 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't
12 of Social & Health Services, PAB No. D86-119 (1987).

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14 4.4 Respondent has proven that more likely than not, Appellant reported to work under the
15 influence of alcohol. Appellant had a duty to report to work fit for duty. Respondent has proven
16 that she failed to do so, thereby constituting a neglect of duty. Furthermore, Appellant's actions
17 were unprofessional.

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19 4.5 Board precedent supports the sanction of dismissal for employees who use alcohol while on
20 duty. The Board has held that even when an employee acknowledges and seeks help for alcohol
21 related problems, the employee must be held accountable for his or her on the job behavior while
22 under the influence of alcohol. (See Painter v Dept. of Labor and Industries, PAB No. D94-034
23 (1995), aff'd, Thurston Co. Super. Ct. No. 95-2-01406-0 (1998); Downing v Dept. of Fish and
24 Wildlife, PAB No. DISM-99-0002 (2000)).

1 4.6 Under the totality of the undisputed facts and circumstances presented here, Respondent has
2 met its burden of proving the charges in the disciplinary letter and has proven that the disciplinary
3 sanction of dismissal is appropriate. Therefore, the appeal should be denied.
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5 **V. ORDER**

6 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Carol Dominy-Gardner is
7 denied.

8 DATED this _____ day of _____, 2001.
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10 WASHINGTON STATE PERSONNEL APPEALS BOARD

11 _____
12 Walter T. Hubbard, Chair
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15 Gerald L. Morgen, Vice Chair
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